IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

LUCIA GONZALEZ-MAJANO, AND JOAQUIN HERNANDEZ)	
Plaintiff,)	
vs.)	
UNITED STATES, Defendant.)))	Civil Action No.:

COMPLAINT & JURY CLAIM

PARTIES

- 1. The Plaintiff, Lucia Gonzalez-Majano, is an adult resident of Massachusetts residing at 10 Lamson Court, East Boston, Suffolk County, Massachusetts.
- 2. The Plaintiff, Joaquin Hernandez, is an adult resident of Massachusetts, residing at 10 Lamson Court, East Boston, Suffolk County, Massachusetts.
- 3. The Defendant, United States, is sued for Plaintiffs injuries caused by the negligent or wrongful acts or omissions of its employees.

JURISDICTION & VENUE

- 4. Plaintiff hereby realleges and incorporates herein paragraphs 1-3.
- 5. This action is brought pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(B), 2671 *et seq.*, against the United States, which vest exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.
- 6. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §§ 1391(b)(1) and/or 1391(b)(2) because the United States is a defendant and Plaintiffs reside in the District of Massachusetts.

FACTS

- 7. Plaintiff hereby realleges and incorporates herein paragraphs 1-6.
- 8. At all times pertinent in this action, Cambridge Street, Massachusetts, was and still is a public way.
- 9. On or about March 28, 2019, the Plaintiff, Joaquin Hernandez, owned and operated a motor vehicle on Cambridge Street, Boston, Massachusetts.
- 10. On or about March 28, 2019, the Plaintiff, Lucia Gonzalez-Majano, was the passenger in the motor vehicle operated by Plaintiff, Joaquin Hernandez, on Cambridge Street, Boston, Massachusetts.
- 11. On or about March 28, 2019, Robert Litwinsky, was an employee, agent, or servant of the U.S. Department of Veteran Affairs.
- 12. At all relevant time, the Defendant, United States, acted through its agency, the U.S. Department of Veteran Affairs.
- 13. On or about March 28, 2019, Robert Litwinsky, operated a vehicle on behalf of the Defendant, United States, through its agency, Department of Veteran Affairs and in his capacity as an employee of the Department of Veteran Affairs.
- 14. On or about March 28, 2019, the Defendant, Robert Litwinsky, acting within the scope of his employment with the Department of Veteran Affairs, so negligently and carelessly operated a motor vehicle on Cambridge Street, Boston, Massachusetts, that by reason thereof an accident was caused.
- 15. On or about March 28, 2019, the Plaintiff was operating his vehicle on Cambridge Street when Robert Litwinsky, crossed into Plaintiff's lane and hit the Plaintiff's vehicle.
- 16. On or about March 28, 2019, Robert Litwinsky failed to operate the motor vehicle in a reasonably safe and prudent manner, resulting in injury to the Plaintiff.
- 17. Under these circumstances, the Defendant, United States, if a private person, would be liable to the Plaintiffs in accordance with the laws of the Commonwealth of Massachusetts. See 28 U.S.C. § 1346(b).

- 18. Pursuant to 28 U.S.C. § 2675, Plaintiff, Lucia Gonzalez-Majano's claim was presented to the appropriate agency of the Defendant, United States, namely the Department of Veteran Affairs on or about January 21, 2020.
- 19. On or about March 18, 2020, the Plaintiff, Lucia Gonzalez-Majano received a denial letter regarding her Administrative Tort Claim.
- 20. Pursuant to 28 U.S.C. § 2675, Plaintiff, Joaquin Hernandez's claim was presented to the appropriate agency of the Defendant, United States, namely the Department of Veteran Affairs on or about January 21, 2020.
- 21. On or about March 18, 2020, the Plaintiff, Joaquin Hernandez received a denial letter regarding his Administrative Tort Claim.

<u>COUNT I – NEGLIGENCE</u> <u>Lucia Gonzalez-Majano v. United States.</u>

- 22. The Plaintiff realleges and thereby incorporates herein by reference paragraphs 1-21.
- 23. The Defendant owed a duty of care to the Plaintiff.
- 24. The Defendant breached that duty of care by its employee, agent, servant, or someone acting on its behalf failing to drive in a reasonable and safe manner.
- 25. The breach of the duty referenced above constitutes negligence.
- 26. As a direct and proximate cause of the negligent operation of a motor vehicle by the Defendant, their agents, servants, or employees, the Plaintiff suffered damages and incurred medical bills and expenses, and further underwent significant pain and suffering.
- 27. Plaintiff had medical bills in excess of \$2,000.00, in accordance with the provisions of M.G.L. c. 231 Section 6D.

<u>COUNT II – NEGLIGENCE</u> <u>Joaquin Hernandez v. United States</u>

- 28. The Plaintiff realleges and thereby incorporates herein by reference paragraphs 1-27.
- 29. The Defendant owed a duty of care to the Plaintiff.

- 30. The Defendant breached that duty of care by its employee, agent, servant, or someone acting on its behalf failing to drive in a reasonable and safe manner.
- 31. The breach of the duty referenced above constitutes negligence.
- 32. As a direct and proximate cause of the negligent operation of a motor vehicle by the Defendant, their agents, servants, or employees, the Plaintiff suffered damages and incurred medical bills and expenses, and further underwent significant pain and suffering.
- 33. Plaintiff had medical bills in excess of \$2,000.00, in accordance with the provisions of M.G.L. c. 231 Section 6D.

WHEREFORE, the Plaintiffs demands judgment against the Defendant; that damages be awarded and the Plaintiffs be awarded same, along with costs, interest and reasonable attorney's fees.

JURY CLAIM: the Plaintiffs in the above referenced matter demand a right to a trial by jury.

By Plaintiffs' attorney,

/s/ James Ostendorf

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